

DURHAM CITY COUNCIL WORK SESSION
Tuesday, January 23, 2018 @ 10:00 a.m.
2nd Floor Committee Room – 101 City Hall Plaza

Present: Mayor Steve Schewel, Mayor Pro Tempore Jillian Johnson and Council Members Vernetta Alston, Javiera Caballero, DeDreana Freeman, Mark-Anthony Middleton and Charlie Reece. Absent: None.

Also present: City Manager Tom Bonfield, City Attorney Patrick Baker and Acting City Clerk Diana Schreiber.

The meeting was called to order by Mayor Pro Tempore Johnson who noted the meeting was a replacement for the cancelled January 18, 2018 Work Session; and expressed gratitude to the city employees involved in the winter storm clean up.

Mayor Pro Tempore Johnson asked if there were any announcements from the Council Members.

Mayor Schewel announced he was going to depart from the meeting early and designated Mayor Pro Tempore Johnson to preside over the meeting; and stated he would miss the first Community Conversation due to being out of town at the US Conference of Mayors.

Mayor Pro Tempore Johnson asked if there were any priority items from the City Manager, City Attorney and City Clerk.

City Manager Bonfield referenced the following priority items:

- Agenda Item #13 - City Code and Fee Revisions for Small Cell Wireless Facilities in the Public Right-of-Way was going to include a presentation;
- Agenda Item #14, Durham Orange Light Rail Transit Oriented Development Planning Presentation, the item was pulled and referred back to the Administration and the presentation would be rescheduled;
- Thanked Mayor Pro Tempore about her kind comments about the staff storm clean-up work and requested Deputy Manager Ferguson give an update on post-storm operations.

MOTION by Council Member Reece, seconded by Council Member Middleton, to accept the priority items as stated by the City Manager. The motion was approved unanimously.

City Attorney and City Clerk had no priority items.

Deputy City Manager for Operations Bo Ferguson gave an overview of the inclement weather snow event and the city's operational response with special commendation of Public Works', General Services', Solid Waste, Water Management, Fleet Management, Fire, Police and 9-1-1 employees; mentioned the Recollect App that can be used for information about solid waste service notifications and urged interested parties to go to the Solid Waste Webpage for additional information.

City Manager Bonfield highlighted there was a Joint City-County Emergency Management Department activated during inclement weather events.

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Mayor Pro Tempore Johnson announced the items printed on the agenda; and the following item was pulled for comments, presentation and/or further discussion:

- Item #1 - Approval of the City Council Minutes

SUBJECT: CITY-COUNTY COMMISSION ON CONFEDERATE MONUMENTS AND MEMORIALS

Taking the prerogative of the Chair, Mayor Pro Tempore Johnson shifted Agenda Item #17, City-County Commission on Confederate Monuments and Memorials to be addressed next so that after the discussion, Mayor Schewel could depart.

Mayor Schewel spoke about how to move forward as a community following the toppling of the confederate monument outside of the Old Courthouse by addressing the remaining remnants of the Confederacy, the base of the toppled monument and the other vestiges of enslavement; and had conferred with Chair of the Durham County Commissioners Wendy Jacobs to devise an effort to address the monuments; stated that both were supportive to devising a commission to be formed to discuss the issue publicly within the timeline of Spring 2018 to December 2018; stated the commission's findings would be reported in December of 2018 to the Joint City-County Meeting of elected officials with recommendations on what the monuments and memorials were and how to deal with them as a community; noted that in the packet was a memo with attachments that summarized the commission's organization and membership; referenced Commissioner Jacobs' comments that were in the packet; explained that at a recent Joint City-County meeting, there had been a vote to proceed with the commission; stated a meeting had been scheduled with the City-County managers and other leaders to devise strategy; and asked Council for their approval.

Council Member Reece thanked Mayor Schewel for his work in putting the Commission together to have a larger, structured community conversation about public monuments; stated he had a deep respect for a number of the historical issues at play by voicing the fact that he was a descendant of Confederate Veterans and that it was fair to say if ever there was a moment that the memorials were appropriate in the public square, that time had long passed; asked about the last set of specific recommendations at the bottom of Page 3 of the Mayor's memo, 'Recommendations for People, Places, Events to be Recognized for Future Public Spaces'; on one hand, expressed concern about mixing the streams relevant to the important work of the Commission in determining the full census and recommendations for what to do with the objects, to the extent they still existed; and on the other hand, stated there was a broader conversation in the community about what types of people, places and events ought to be memorialized; and wondered if there was another way to get at the really important question.

Mayor Schewel responded that the City Manager had the same question; spoke to selecting who and what should be memorialized would be a focus of the members of the 150th Anniversary/Sesquicentennial Task Force; and explained the Commission would make its own recommendations and take preliminary names of which would be passed on the Sesquicentennial Task Force for designating such honors.

Council Member Middleton appreciated the initiative; explained he was a descendant of slaves that had been quartered and employed at the Middleton Plantation outside of Charleston, SC, up the Ashley River; and noted that the owner of the Plantation, Arthur Middleton, had been one of the signers of the *United States Declaration of Independence*.

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Council Member Middleton stated he appreciated the Commission and the full weight and prestige of the government that was being brought to bear on the issue; in his assessment, he explained the greatest legacy of the Confederacy and slavery was the continuing economic inequality of our people in the city; hoped, moving forward, although this may have a cathartic effect on the descendants of the Confederacy and may even have a cathartic effect for Black people walking past monuments in the city; hoped that we would bring the same amount of energy, focus and attention to some issues coming down the pike in terms of dealing with economic inequality, jobs and participation; and stated that he would be glad when the statues came down but there were still things the statutes represented that would very much still be in place; and echoed his colleague's comments about not conflating who we honor with this particular issue.

Mayor Schewel duly noted both of his colleagues' comments; and spoke to the forthcoming economic development plan that the City Manager was forthcoming in the not too distant future.

City Manager Bonfield requested clarification of Council's direction.

Mayor Pro Tempore Johnson indicated that to devise a plan of action, a motion was necessary.

MOTION by Mayor Schewel, seconded by Council Member Middleton, to suspend the rules in order to vote on the item; the motion was approved unanimously.

MOTION by Mayor Schewel, seconded by Council Member Reece, to authorize Council to move forward and figure out the process; the motion was approved unanimously.

SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

Mayor Pro Tempore Johnson inquired about an item in the minutes; and directed her question to Patrick Baker, City Attorney, asking about a presentation on the legal status of inclusionary Zoning that had been delayed at the October 5th meeting; and asked when the presentation would come back before Council.

Attorney Baker responded that he would investigate and follow-up with Council.

SUBJECT: CITY CODE AND FEE ORDINANCE REVISIONS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC WAY

Dan Vallero, Civil Engineer of the Public Works Department, gave the staff report on Small Wireless Facilities located in the Public Right of Way. The PowerPoint contained photographs, session laws, examples and other municipal responses; the presentation follows:

Topics

- The Public Way – An Overview
- Infrastructure Within the Public Way
- State Law – Small Wireless Facilities
- Small Wireless Facilities Examples
- Other Municipality Responses
- Pros and Cons

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The Public Way or Right of Way

- Generally, strips of land that provide access to parcels.
- Can be private, NCDOT-maintained, or City-maintained.
- City acquires right of way through different methods:
- Acquisition
- Dedication and acceptance
- Prescription
- ROW is used for a variety of different types of infrastructure:
- Public: Streets, sidewalks, storm drainage, traffic control devices, water, sanitary sewer
- Private: Natural Gas, Cable TV, Electricity, Fiber Optic
- City has authority and control over City ROW, unless limited by state law
- Chapter 62 of the City's Code of Ordinances sets out many of the rules that apply to City's right of way

Infrastructure within the Public Way

- Who and what are allowed?
- State sets some rules
- Cities set some rules
- What is already existing in the Public Way?
- Public Infrastructure
- Privately-Owned Utilities
- Other Facilities

Public Infrastructure - Photos

- Streets and Sidewalks
- Storm Drainage
- Traffic Control Devices
- Sanitary Sewer
- Water for Drinking and Fire Protection

Infrastructure within the Public Way

- What is already existing in the Public Way?
- Privately-Owned Utilities
- Electrical wires and conduits
- Natural Gas pipes
- TV Programming cabling
- Telecommunications cabling
- Other Facilities
- Monument signs
- Irrigation systems
- Monitoring Wells
- Landscaping

State Law – Small Wireless Facilities

- Session Law 2017-159 effective July 21, 2017
- Before, Cities could decide whether or not Small Cell Wireless Facilities were permissible within the Public Way.
- Note: Federal law requires equal access to telecommunication providers.
- Now, Cities must allow Small Cell Wireless Facilities within the Public Way pursuant to requirements established by state statute.

State Law – Small Wireless Facilities

What is a Small Wireless Facility?

- Devices that meet certain size requirements that provide telecommunication capabilities "over the air."
- Essentially, these facilities provide similar services to what larger, traditional cellular Towers provide.

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- Examples are provided on upcoming slides. Note that the examples may not necessarily meet all requirements.
- State Law definition: “[facilities where] each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of not more than six cubic feet [and] all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet [with the volume calculation not including the electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.”
- Examples

Other Municipality Responses

- Cities throughout North Carolina are working on ordinance updates to conform with the requirements of the new law.
- Only Winton-Salem and Cary have already passed ordinance revisions of the statewide requirement.
- Revising the City of Durham ordinances will be helpful, as the City is already receiving applications.

Pros

- People seem to want the services Small Wireless Facilities offer.
- Supports the 5Gig “Smart City” options
- Less excavation work required than wired networking
- Presumably less impact to existing infrastructure and services

Cons

- Aesthetic impact
- Disruptions to residents during construction activities
- Staff workload impacts
- Potential conflicts with existing or proposed city maintained infrastructure

Summary

- State Law requires the City to allow Small Wireless Facility and prescribes the means to do so
- Where the State Law allowed discretion, city staff applied the maximum restrictions
- Pole height
- Historic preservation elements allowed under state law
- The City is already receiving applications for Small Wireless Facilities in Planning.

Mr. Vallero fielded questions from Council.

- Who are the customers of this service? The end users are Verizon, Frontier, AT&T, Sprint, etc. Contractors actually install the devices who lease them to the internet providers such as Verizon, et al.
- Is this how customers get 5G/LTE on their mobile devices? It can be used by customers for Smart Home network usage with multiple devices per home; each device uses a certain amount of bandwidth and to accommodate the background network use, the facilities allow for expanded bandwidth and usage.
- Do contractors who install wiring then sell or lease that bandwidth to larger providers? Yes.
- How will deployment occur? License agreements are necessary and will be required to come before Council for approval.
- Is it possible to get a copy of the license agreement(s)? Yes. Each agreement is prepared and negotiated separately but a copy can be provided.

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- Are there time limits on the license agreements? Typically, a telecommunication license has no expiration date but has a revocation clause. Attorney O'Toole addressed the license agreements that basically set the general rules of operation in the city; the code of ordinance provision before Council pertained to the permitting of the actual installation; noted that FCC federal law required equal access to all tele-communication providers; and stated the city was not allowed to tell providers that they were not welcome to operate in Durham. However, the City had the authority to grant a license or not. Providers would need to follow the license agreement and code provisions. If they did not, then a potential termination of license provisions would ensue.
- Was data being tracked by the City? No.
- In terms of money spent for city infrastructure, could costs be passed along to the private entity? Yes. In accordance to both license agreement and code provision, if the city needed to make changes to the right of way, then the utilities would need to move the infrastructure at their own cost. Reimbursement was authorized by state law; and damages to the city's infrastructure were enforceable.

City Manager Bonfield asked about the recovery of inspection fees relevant to fiber installations; stated that state law preempted the city from charging and recovering costs for inspection services; and asked Mr. Joyner about the impact of the new technology on inspection costs.

Robert Joyner, Public Works, responded that the technology would increase the inspection burden only for a small amount of time over next three to five years; there would be an increase in the number of poles set; the individual installations will generate inspections on their own and one time after that; with co-location that occurs on those towers will not be inspected by the city because it will be an up-air wireless installation on the pole itself, so there would be no digging around the base of the pole; and explained the technology has merged toward digital and required towers to be located closer together to accommodate the powerful digital signals thereby preventing interruption.

Mayor Schewel departed the meeting at 10:57 a.m.

Council continued requesting additional information from staff:

- Who had air rights? Air rights were granted in the telecommunication license agreement which was required by law.
- Was there a fee associated with the granting of air rights? Within the 2016 Session Law, preempted the city from collecting fees. However, in this particular ordinance, it allowed for small fee collection: \$100 for first one and \$50 for each additional.
- To optimally cover the city, how many of the poles would be required? Estimated pole spacing would be placed every 300 feet. Attorney O'Toole stated the poles would be focused initially in the downtown area. Mr. Joyner explained that the majority of the co-locates would be owned by Duke Power.
- Would all areas in the city be covered? Deployment plans were in process.

Mayor Pro Tempore Johnson requested pictures of the devices when they started being installed.

Mr. Vallero would provide photographs when available.

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Settling the Agenda - February 5, 2018 City Council Meeting

City Manager Bonfield stated the items for Consent were Items 1 through 13; and General Business Agenda Items 15 and 16.

MOTION by Council Member Freeman, seconded by Council Member Alston, to accept the settled agenda for the February 5, 2018 City Council Meeting as stated by City Manager Bonfield; the motion was approved unanimously.

The Acting Clerk announced the results of the ballot of the City–County Environmental Affairs Board, filling the category of Energy, Council nominated Casey Collins; and for the City-County Planning Commission, Council nominated Carmen Nicole Williams.

City Manager Bonfield distributed information regarding the upcoming Community Conversations.

There being no further business to come before Council, the meeting was adjourned at 11:03 a.m.

Diana Schreiber
Acting City Clerk